

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:120. Admission; searches and release.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes admission, search, and release procedures for full-service jails.

Section 1. Policy and Procedure. Each jail shall develop written admission, orientation, and release procedures to be included in the jail's policy and procedure manual.

Section 2. Admission. (1) A person in need of emergency medical attention shall not be admitted to the jail until a medical examination is conducted. A Denial of Admission document shall be completed, listing the reason for denial. The document shall be signed by jail personnel on duty.

(2) Jail personnel shall ensure that each prisoner is committed under proper legal authority by a duly authorized officer.

(3) An intake form shall be completed on every new admission and shall include the following:

- (a) Time and date of commitment;
- (b) Name, alias, and nickname;
- (c) Official charge;
- (d) Authority ordering commitment;
- (e) Unit of government to be billed;
- (f) Signature and title of arresting or committing officer;
- (g) Date of birth;
- (h) Race;
- (i) Sex;
- (j) Height and weight;
- (k) Current or last known address;
- (l) Telephone number;
- (m) Marital status;
- (n) Spouse or next of kin;
- (o) Emergency contact including name, relationship [~~relation~~], address, and telephone number;
- (p) Employer, place of employment, and telephone number;
- (q) Social Security number;
- (r) Health status including current medications, known allergies, diet, or other special medical needs;
- (s) The name of any known person in the jail who might be a threat to the prisoner; and
- (t) Mental health history including past hospitalizations, comprehensive care treatment, cur-

rent treatment, and medication.

Section 3. Searches. (1) Jail personnel shall conduct a search of each prisoner and his possessions.

(a) Each prisoner shall be searched for contraband in a manner jail personnel reasonably determine is necessary to protect the safety of fellow prisoners, jail personnel, and facility [~~institutional~~] security.

(b) A prisoner may be strip searched only on reasonable suspicion that is based upon the existence of objective information that may predict the likelihood of the presence of a weapon, drugs, or other item of contraband concealed on a particular prisoner. Reasonable suspicion may be based upon one (1) or more of the following examples:

1. A current felony offense, fugitive status, or past felony conviction, involving violence or drug charges;

2. Institutional behavior, reliable information, or history that indicates possession or manufacturing of a dangerous contraband, the refusal to submit to a clothed pat down search, or a clothed pat down search reveals the possession of a dangerous contraband;

3. Contact with the public by a contact visit, court appearance that takes place in an area to which the public may have access, or after transport from or through an area to which the public may have access; or

4. The court has ordered commitment to custody after arraignment, conviction, sentencing, or other court appearance, and the prisoner was not in custody prior to the court appearance.

(c) The jailer shall require that a strip search or body cavity search be documented in writing. Documentation shall include:

1. Basis for reasonable suspicion to conduct a search;

2. Date and time of search;

3. Name of prisoner;

4. Name of person conducting search;

5. Type of search; and

6. Result of search.

(d) A strip search shall be conducted by jail personnel of the same sex as the prisoner and in a private area.

(e) Probing of body cavities shall:

1. Not be done unless there is reasonable suspicion to believe that the prisoner is carrying contraband in a body cavity; and

2. Be conducted in a private location, under sanitary conditions, by a licensed medical professional, acting within his statutory scope of practice.

(2) Each jail shall develop written policies and procedures[;] specifying the personal property that a prisoner may retain in his possession.

(a) Cash or personal property taken from a prisoner upon admission shall be listed by complete description on a receipt form, and securely stored pending the prisoner's release. The receipt shall be signed by the receiving jail personnel and the prisoner and kept for the jail record.

(b) If the prisoner is inebriated, is a mental inquest detainee, [~~or~~] is mentally ill, or has an intellectual disability[~~mentally retarded~~], there shall be at least one (1) witness to verify the transaction in paragraph (a) of this subsection. As soon as the prisoner is able to understand and account for his actions, the prisoner may sign the receipt.

(c) Personal property released to a third party shall have the prisoner's signature of approval and the signature receipt of the third party.

(3) The jailer may establish a written policy on hair length or beards if based on actual concerns for safety, security, identification, or hygiene. A prisoner may be permitted freedom in personal grooming if not in conflict with the jail's policy. Caution shall be taken to protect prisoner rights in accordance with court decisions regarding religious practice.

Section 4. Orientation. (1) As soon after assignment as possible, an oral or written orientation shall be made available to each prisoner.

(2) The orientation shall provide the prisoner with information regarding his confinement, including the following:

(a) Information pertaining to rising and retiring, meals, mail procedures, work assignments, telephone privileges, visitation, correspondence, commissary, medical care, and other matters related to the conditions of the prisoner's confinement;

(b) Rules of prisoner conduct established pursuant to 501 KAR 3:060, Section 1(3);

(c) Disciplinary procedures;

(d) Information regarding work, educational and vocational training, counseling, and other social service programs; and

(e) Procedures for making a request or registering a complaint with ~~the~~ jail personnel or department personnel. Prisoners shall follow the grievance procedure and attach a copy of the grievance documents if requesting a review by the department.

Section 5. Release. (1) Written legal authorization shall be required prior to the release or removal of a prisoner from confinement.

(2) When a prisoner is released or removed for a legal purpose to the custody of another, the identity of receiving authority shall be verified.

(3) A written record shall be kept of the time, purpose, date, and authority for release or removal from confinement, and into whose custody the prisoner is released or removed.

(4) Prior to the release or removal of a prisoner, the receiving authority shall sign an authorized release form.

(5) Before jail personnel releases a prisoner to an out-of-state jurisdiction, jail personnel shall consult with the appropriate prosecutorial office in the county.

(6) Property, not legally confiscated or retained, receipted from the prisoner upon admission shall be returned to the prisoner when the prisoner is released.

(7) Each prisoner shall sign a receipt for property returned at the time of release.

(8) A complaint regarding property returned shall be submitted in writing with specific details within twenty-four (24) hours from the time of release.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: July 23, 2021

FILED WITH LRC: August 3, 2021 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 21, 2021, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Any person who wishes to be heard at this hearing shall notify the agency in writing by five workdays prior to the hearing of their in-

tent to attend. If a notice of intent to attend the hearing is not received by that date, the hearing may be cancelled. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 31, 2021. Send written notice of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes admission, search, and release procedures for full-service jails.

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b). It establishes minimum standards for admission, search, and release procedures for full-service jails.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will clarify admission, search and release minimum standards for full-service jails.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment adds statute citations for authority and enlarges the authorization language. It corrects typographical errors, changes “mentally retarded” to “intellectual disability,” and clarifies language.

(b) The necessity of the amendment to this administrative regulation: The minimum standards were revised as part of the standard review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It clarifies language for the procedures for admission, search and release.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 74 county and regional jails and their staff, approximately 50 Department of Corrections employees, including 15 Local Facilities staff, and approximately 18,800 prisoners in the jails, including 5,585 Class C and D felons.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Jail staff will have to review the clarified language to ensure compliance with the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment provides clarification on admission, search and release.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is anticipated.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established or increased.

(9) TIERING: Is tiering applied? No. The standards apply equally to all full-service jails.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Corrections and full-service county jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.35, 441.055.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2021, the department paid the local jails approximately \$105.9 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. In addition, the department incurred approximately \$1,451,110 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: